

## CONFERENCE COMMITTEE REPORT DIGEST FOR ESB 382

**Citations Affected:** IC 7.1-3-23-26.1; IC 7.1-5-7-13.

**Synopsis:** Alcohol server training. Requires the alcohol and tobacco commission (commission) to establish application requirements, fees, standards, and renewal requirements for certification of alcohol server training programs. Establishes requirements for the certification of alcohol server training programs. Requires retailer permittees and dealer permittees to: (1) complete a certified alcohol server training program; (2) ensure that each alcohol server completes a certified alcohol server training program and attends refresher courses; and (3) maintain training verification records. Prohibits an applicant for certification of an alcohol server training program from having an interest in a permit issued to a primary source of supply, a wholesaler, a retailer, or a dealer. Makes conforming amendments. **(This conference committee report provides that an applicant for certification of an alcohol server training program may not have an interest in a dealer permit. This conference committee report removes provisions from ESB 382 that do the following: Eliminates a requirement that the prosecutor for the commission reside in Indiana for five years before appointment. Increases the term of a retailer's or dealer's permit from one to two years, but requires a permit fee to be paid annually. Increases the following permit fees: (1) One-way retailer's or dealer's permit from \$250 to \$500 annually. (2) Two-way retailer's or dealer's permit from \$500 to \$750 annually. (3) Three-way retailer's or dealer's permit from \$750 to \$1,000 annually. Requires 34% of the permit fees for certain permits to be deposited in the enforcement and administration fund and 66% of the permit fees in the state general fund instead of all fees deposited in the state general fund. Requires 50% of the excise fund to be deposited in the enforcement and administration fund, 25% to be deposited in the state general fund, and 25% to be distributed to municipalities. Requires the commission to publish notice of a new retailer's or dealer's permit and notice of investigation only one time in a newspaper of general circulation published in the county where the permit is located. Allows a beer retailer to serve samples of beer and flavored malt beverages. Allows a liquor retailer or dealer to serve samples of flavored malt beverages. Eliminates supplemental retailer's permits and allows one-way, two-way, and three-way retail permit holders to sell alcoholic beverages on Sunday. Increases the fee for a temporary bartender's permit from \$4 to \$5. Increases the fee for a tobacco sales certificate from \$50 to \$200 and the term of a tobacco sales certificate from one to three years. Increases the fee for an employee's permit used to**

perform volunteer service from \$5 to \$15. Allows the commission to suspend the permit of a permit buyer if the buyer has not paid the permit seller and the seller has obtained a judgment. Allows the commission to auction not more than five three-way permits to restaurants in Jeffersonville and five three-way permits to restaurants in Clarksville that are located in an economic development area. Requires a minimum bid of \$35,000 and a renewal fee of \$1,350, which are deposited in the enforcement and administration fund. Makes it a Class A infraction for a person to sell or distribute tobacco products to a tobacco retailer who does not hold a valid tobacco sales certificate. Provides that if a primary source of supply acquires the rights to a product and decides not to have a beer wholesaler continue to distribute the product, the wholesaler must be compensated for the loss of the right to distribute the product or the wholesaler will continue to distribute the product. Allows a beer wholesaler to offer a special discount price to a beer dealer or beer retailer if the beer or flavored malt beverage is a brand or package the beer wholesaler has discontinued or the beer or flavored malt beverage will expire within a certain date. Allows a manufacturer to offer on a nondiscriminatory basis bona fide incentives to a wholesaler if the incentives are determined based on sales to retailers or dealers occurring during specified times and for specified products. Allows the commission to issue five three-way, two-way, or one-way permits to a restaurant that is located: (1) in a historic district in a city or town; or (2) not more than 500 feet from the historic district; if the historic district meets certain requirements, and provides that the legislative body of the city or town must adopt an ordinance requesting the commission to issue a permit. Provides that an applicant may not already have a permit (that is subject to a quota) for premises within the historic district or within 500 feet of a district. Prohibits a permit issued under these provisions from being transferred. Makes the purchase, offer for sale, or possession of an alcohol vaporizing device or vaporized alcohol a Class A infraction. Makes a subsequent offense a Class A misdemeanor if a person knowingly or intentionally commits the subsequent offense. Provides that an individual may be denied an employee's permit if: (1) the individual has two convictions for operating while intoxicated that occurred within ten years before the date of the application; or (2) the individual completed serving a sentence for a conviction of operating while intoxicated within two years before the date of the application. Provides that if an individual has three convictions for operating while intoxicated, the commission may grant or deny an application for an employee's permit. Requires the commission to adopt a definition of "grocery store" before January 31, 2006. Prohibits the commission from issuing, renewing, or transferring a permit if an applicant has not paid innkeeper's taxes that are currently due.)

**Effective:** Upon passage; July 1, 2005.

Adopted

Rejected

## CONFERENCE COMMITTEE REPORT

**MR. SPEAKER:**

*Your Conference Committee appointed to confer with a like committee from the Senate upon Engrossed House Amendments to Engrossed Senate Bill No. 382 respectfully reports that said two committees have conferred and agreed as follows to wit:*

that the Senate recede from its dissent from all House amendments and that the Senate now concur in all House amendments to the bill and that the bill be further amended as follows:

- 1 Delete everything after the enacting clause and insert the following:
- 2 SECTION 1. IC 7.1-3-1.5 IS ADDED TO THE INDIANA CODE
- 3 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
- 4 JULY 1, 2005]:
- 5 **Chapter 1.5. Certification of Alcohol Server Training Programs**
- 6 **Sec. 1. As used in this chapter, "alcohol server" means the**
- 7 **following:**
- 8 **(1) A person who works on the licensed premises of a retailer**
- 9 **permittee as a:**
- 10 **(A) manager;**
- 11 **(B) bartender; or**
- 12 **(C) waiter or a waitress.**
- 13 **(2) A person who works on the licensed premises of a dealer**
- 14 **permittee as a:**
- 15 **(A) manager; or**
- 16 **(B) sales clerk.**
- 17 **Sec. 2. As used in this chapter, "dealer permittee" means a**
- 18 **person who holds a liquor dealer permit under IC 7.1-3-10 for a**
- 19 **package liquor store.**
- 20 **Sec. 3. As used in this chapter, "program" refers to a program**
- 21 **designed to educate an alcohol server on the:**
- 22 **(1) selling;**

1           (2) serving; and  
 2           (3) consumption;  
 3 of alcoholic beverages.

4       **Sec. 4.** As used in this chapter, "retailer permittee" means a  
 5 person who holds a:

- 6           (1) beer retailer's permit under IC 7.1-3-4;
- 7           (2) liquor retailer's permit under IC 7.1-3-9; or
- 8           (3) wine retailer's permit under IC 7.1-3-14.

9       **Sec. 5.** (a) The commission shall adopt rules under IC 4-22-2 to  
 10 establish:

- 11           (1) an application form;
- 12           (2) standards; and
- 13           (3) fees;

14 for certification of a program under this chapter.

15       (b) The commission shall adopt rules under IC 4-22-2 to  
 16 otherwise carry out this chapter.

17       **Sec. 6.** The commission shall require the following standards for  
 18 certification of a program under this chapter:

- 19           (1) Training by an instructor who has knowledge in the subject  
 20 areas described in this section.
- 21           (2) Information on specific subject areas as required by the  
 22 commission.
- 23           (3) A minimum of at least two (2) hours of training to complete  
 24 the program.
- 25           (4) Information on:
  - 26               (A) state laws and rules regarding the sale and service of  
 27 alcoholic beverages;
  - 28               (B) the classification of alcohol as a depressant and the effect  
 29 of alcohol on the human body, particularly on the ability to  
 30 drive a motor vehicle;
  - 31               (C) the effects of alcohol:
    - 32                   (i) when taken with commonly used prescription and  
 33 nonprescription drugs; and
    - 34                   (ii) on human behavior;
  - 35               (D) methods of:
    - 36                   (i) identifying and refusing to serve or sell alcoholic  
 37 beverages to an underage or intoxicated person; and
    - 38                   (ii) handling situations involving an underage or  
 39 intoxicated person;
  - 40               (E) methods for properly and effectively:
    - 41                   (i) checking the identification of an individual;
    - 42                   (ii) identifying an illegal identification of an individual; and
    - 43                   (iii) handling situations involving individuals who have  
 44 provided illegal identification;
  - 45               (F) security and law enforcement issues regarding the sale  
 46 and service of alcoholic beverages; and
  - 47               (G) recognizing certain behavior to assess the amount of  
 48 alcohol an individual:
    - 49                   (i) has consumed; and
    - 50                   (ii) may safely consume.
- 51           (5) One (1) or both of the following:

1 (A) A written test.

2 (B) An oral test.

3 Sec. 7. The commission shall issue a certificate to an applicant  
4 who:

5 (1) files the application and pays the fees established by the  
6 commission under section 5 of this chapter;

7 (2) meets the:

8 (A) requirements under this chapter; and

9 (B) rules adopted by the commission;

10 (3) is a:

11 (A) nonprofit corporation or organization; or

12 (B) for-profit corporation or organization that does not have  
13 an interest in a permit issued to a primary source of supply,  
14 a wholesaler, a retailer permittee, or a dealer permittee  
15 under this chapter; and

16 (4) does not hold a permit under this article.

17 Sec. 8. (a) A certificate issued under this chapter expires at a time  
18 and date designated by the commission.

19 (b) The commission shall adopt rules to establish:

20 (1) an application form; and

21 (2) fees;

22 for the renewal of a certificate under this chapter.

23 (c) The commission shall send written notice of the upcoming  
24 expiration of a certificate to each certificate holder at least sixty  
25 (60) days before the expiration of the certificate. The notice must  
26 inform the certificate holder of the need to renew and the  
27 requirement of payment of the renewal fee. If notice of expiration  
28 is not sent by the commission, the certificate holder is not subject  
29 to a sanction for failure to renew if, once notice is received from the  
30 commission, the certificate is renewed within forty-five (45) days  
31 after the receipt of the notice.

32 Sec. 9. To renew a certificate under this chapter, the certificate  
33 holder must:

34 (1) file the renewal application established and provided by the  
35 commission; and

36 (2) pay the renewal fee in the amount established by the  
37 commission;

38 not later than the expiration date of the certificate.

39 Sec. 10. (a) The commission may:

40 (1) refuse to issue, renew, or restore a certificate issued under  
41 this chapter; or

42 (2) suspend or revoke a certificate issued under this chapter;  
43 if the board determines that the applicant or certificate holder has  
44 not complied with this chapter.

45 (b) The commission may fine a certificate holder for the violation  
46 of a:

47 (1) provision of this chapter; or

48 (2) rule adopted by the commission under this chapter.

49 The commission may fine a certificate holder for each day the  
50 violation continues if the violation is of a continuing nature.

51 Sec. 11. (a) If a person violates this chapter, the attorney general,

the commission, or the prosecuting attorney of the county in which the person violates this chapter may maintain an action in the name of the state to enjoin the person from continuing in violation of this chapter.

(b) A person who is enjoined and who violates the injunction shall be punished for contempt of court.

Sec. 12. A person who operates a program without a certificate under this chapter commits a Class B infraction.

Sec. 13. (a) A retailer permittee or dealer permittee who operates an establishment where alcoholic beverages are served or sold must:

(1) ensure that each alcohol server completes a program certified under this chapter not later than ninety (90) days after the date the alcohol server begins employment at the establishment;

(2) require each alcohol server to attend a refresher course that includes the dissemination of new information concerning the program subject areas described in section 6 of this chapter, as required by the commission; and

(3) maintain training verification records of each alcohol server.

(b) A retailer permittee or dealer permittee must complete a program certified under this chapter not later than ninety (90) days after the date:

(1) the dealer permittee is issued a permit described in section 2 of this chapter; or

(2) the retailer permittee is issued a permit described in section 4 of this chapter.

(c) The commission may suspend or revoke a retailer permittee's or dealer permittee's permit or fine a retailer permittee or dealer permittee for noncompliance with this section in accordance with IC 7.1-3-23.

SECTION 2. IC 7.1-3-23-26.1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 26.1. (a) A retailer permittee or dealer permittee who violates IC 7.1-3-1.5-13, IC 7.1-5-7-4, or IC 7.1-5-7-8 through IC 7.1-5-7-13 may be fined, have his the permittee's permit suspended, or be fined and have his the permittee's permit suspended, as determined by the commission; however, if the penalty imposed by the commission exceeds a fine and three (3) day suspension, the commission must issue written findings of fact and conclusions which show the necessity of the penalty. If the retailer or dealer permittee commits a subsequent violation of the provisions listed in this subsection within twelve (12) months of the first violation, the commission may fine the permittee, fine him the permittee and suspend his the permittee's permit, or revoke his the permittee's permit; however, if the penalty exceeds a fine and suspension of more than fifteen (15) days, the commission must issue written findings of fact and conclusions which show the necessity of the penalty.

(b) The holder of an employee permit who violates IC 7.1-5-7-4 or IC 7.1-5-7-8 through IC 7.1-5-7-13 may be fined, have his the

1 **permittee's** permit suspended, be both fined and have **his the**  
 2 **permittee's** permit suspended, or have **his the permittee's** permit  
 3 revoked, as determined by the commission.

4 SECTION 3. IC 7.1-5-7-13 IS AMENDED TO READ AS  
 5 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 13. ~~(a)~~ Section 12 of  
 6 this chapter does not prohibit the following:

7 (1) The employment of a person at least eighteen (18) years of age  
 8 but less than twenty-one (21) years of age on or about licensed  
 9 premises where alcoholic beverages are sold, furnished, or given  
 10 away for consumption either on or off the licensed premises, for a  
 11 purpose other than:

- 12 (A) selling;
- 13 (B) furnishing, other than serving;
- 14 (C) consuming; or
- 15 (D) otherwise dealing in;

16 alcoholic beverages.

17 (2) A person at least eighteen (18) years of age but less than  
 18 twenty-one (21) years of age from ringing up a sale of alcoholic  
 19 beverages in the course of the person's employment.

20 (3) A person at least nineteen (19) years of age but less than  
 21 twenty-one (21) years of age who:

22 (A) has successfully completed ~~a~~ **an alcohol** server training  
 23 program ~~approved by the commission before applying for an~~  
 24 **employee permit; certified under IC 7.1-3-1.5;** and

25 (B) serves alcoholic beverages in a dining area or family room of  
 26 a restaurant or hotel:

27 (i) in the course of a person's employment as a waiter, waitress,  
 28 or server; and

29 (ii) under the supervision of a person who is at least  
 30 twenty-one (21) years of age, is present at the restaurant or  
 31 hotel, and has successfully completed ~~a~~ **an alcohol** server  
 32 training program ~~approved~~ **certified under IC 7.1-3-1.5** by the  
 33 commission.

34 This subdivision does not allow a person at least nineteen (19)  
 35 years of age but less than twenty-one (21) years of age to be a  
 36 bartender.

37 ~~(b) The commission may adopt rules under IC 4-22-2 to:~~

- 38 ~~(1) create a server training program;~~
- 39 ~~(2) outsource the server training program and licensing; and~~
- 40 ~~(3) establish fees under this section.~~

41 SECTION 4. [EFFECTIVE JULY 1, 2005] (a) **As used in this**  
 42 **SECTION, "commission" refers to the alcohol and tobacco**  
 43 **commission established by IC 7.1-2-1-1.**

44 (b) **As used in this SECTION, "dealer permittee" has the**  
 45 **meaning set forth in IC 7.1-3-1.5-2, as added by this act.**

46 (c) **As used in this SECTION, "program" has the meaning set**  
 47 **forth in IC 7.1-3-1.5-3, as added by this act.**

48 (d) **As used in this SECTION, "retailer permittee" has the**  
 49 **meaning set forth in IC 7.1-3-1.5-4, as added by this act.**

50 (e) **Notwithstanding IC 7.1-3-1.5-12, as added by this act, a**  
 51 **person who is operating a program before July 1, 2005, may**

1 continue to operate the program without a certificate issued under  
 2 IC 7.1-3-1.5, as added by this act, pending the processing of an  
 3 application for a certificate under this SECTION.

4 (f) The person described in subsection (e) may submit to the  
 5 commission an application for a certificate to operate a program  
 6 under IC 7.1-3-1.5, as added by this act. To be entitled to continue  
 7 operating without a certificate under subsection (e), the person  
 8 must submit the application before March 1, 2006.

9 (g) The person described in subsection (e) shall cease operating  
 10 a program if:

11 (1) the person fails to submit an application within the time  
 12 allowed under subsection (f); or

13 (2) the commission notifies the person that the commission has  
 14 rejected the application submitted by the person under this  
 15 SECTION.

16 (h) Notwithstanding IC 7.1-3-1.5-13, as added by this act:

17 (1) a retailer permittee or dealer permittee who is operating an  
 18 establishment where alcoholic beverages are served or sold  
 19 must ensure that each alcohol server completes a program  
 20 certified under IC 7.1-3-1.5, as added by this act, not later  
 21 than:

22 (A) January 1, 2008; or

23 (B) ninety (90) days after the date the alcohol server begins  
 24 employment at the establishment;

25 whichever is later; and

26 (2) a retailer permittee or dealer permittee must complete a  
 27 program certified under IC 7.1-3-1.5, as added by this act, not  
 28 later than:

29 (A) January 1, 2008; or

30 (B) ninety (90) days after the date the retailer permittee or  
 31 dealer permittee is issued a retailer permit or dealer permit  
 32 under IC 7.1-3;

33 whichever is later.

34 (i) This SECTION expires December 31, 2009.

35 SECTION 5. [EFFECTIVE UPON PASSAGE] (a) Notwithstanding  
 36 IC 7.1-3-1.5, as added by this act, the alcohol and tobacco  
 37 commission may initiate rulemaking to implement IC 7.1-3-1.5, as  
 38 added by this act.

39 (b) This SECTION expires January 1, 2006.

40 SECTION 6. An emergency is declared for this act.

(Reference is to ESB 382 as reprinted April 7, 2005.)



**Conference Committee Report**  
**on**  
**Engrossed Senate Bill 382**

**S**igned by:

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Senator Alting  
Chairperson

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Representative Alderman

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Senator Craycraft

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Representative Kuzman

**Senate Conferees**

**House Conferees**